

THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
(SEATTLE)

CENTER FOR BIOLOGICAL DIVERSITY,
et al.,

Plaintiffs,

v.

NATIONAL MARINE FISHERIES
SERVICE, *et al.*;

Federal Defendants,

and

PACIFIC COAST FEDERATION OF
FISHERMEN'S ASSOCIATIONS, *et al.*,

Defendant-Intervenors.

CASE NO. 2:19-cv-00487-MJP

**PLAINTIFFS' UNOPPOSED
REQUEST FOR VOLUNTARY
DISMISSAL**

(Fed. R. Civ. P. 41(a)(2))

Pursuant to Federal Rule of Civil Procedure 41(a)(2), Plaintiffs Center for Biological Diversity and Wild Fish Conservancy ("Plaintiffs") file this unopposed request to dismiss this action with prejudice except for Plaintiffs' claim for attorneys' fees and costs.¹ Counsel for

¹ Plaintiffs and Federal Defendants have reached an agreement on the issue of attorneys' fees and costs and are filing a stipulation and proposed order with the Court.

1 Plaintiffs has conferred with counsel for Federal Defendants National Marine Fisheries Service
2 (NMFS), Regional Administrator for NMFS West Coast Region, and the Secretary of the
3 Department of Commerce (“Federal Defendants”) who do not oppose this request. Counsel for
4 Plaintiffs also contacted Glen Spain, General Legal Counsel and Northwest Regional Director of
5 Defendant-Intervenor Pacific Coast Federation of Fishermen’s Associations (PCFFA). Mr. Spain
6 confirmed that Defendant-Intervenors PCFFA and Coastal Trollers Association (CTA) have not
7 been able to obtain formal substitute counsel for Thane Tienson who passed away earlier this
8 year, but they do not oppose Plaintiffs’ request.

9 To summarize the procedural history of this case, on March 3, 2019, Plaintiffs filed a
10 complaint alleging that NMFS failed to reinitiate and complete consultation on the Pacific Coast
11 Salmon Fishery Management Plan (“Salmon Fishery Management Plan”) and its effects on the
12 Southern Resident killer whale Distinct Population Segment (“Killer Whales”) in violation of the
13 Section 7(a)(2) of the Endangered Species Act (“ESA”), 16 U.S.C. § 1536(a)(2). Dkt. # 1.

14 On April 12, 2019, NMFS reinitiated consultation on the Salmon Fishery Management
15 Plan and its effects on Killer Whales. *See* Dkt. # 24 at 2. Federal Defendants filed, and the Court
16 granted, an unopposed motion to stay the proceedings until issuance of a new Biological Opinion
17 or May 1, 2020, whichever occurred sooner. Dkt. # 24, 26.

18 On April 29, 2020, Federal Defendants issued a Biological Opinion titled *Implementation*
19 *of the Pacific Fishery Management Council Salmon Fishery Management Plan in 2020 for*
20 *Southern Resident Killer Whales and their Current and Proposed Critical Habitat* (“2020
21 Biological Opinion”). On June 5, 2020, Plaintiffs filed an amended complaint alleging violations
22 of the Magnuson-Stevens Fishery Conservation and Management Act (“Magnuson-Stevens
23 Act”), National Environmental Policy Act (“NEPA”), ESA, and Administrative Procedure Act,
24 challenging the adequacy and responsiveness of the 2020 Biological Opinion, among other
25 claims. Dkt. # 31.
26

On July 28, 2020, the Parties filed a Joint Motion for Stay of Proceedings from the Court to allow the Pacific Fishery Management Council to complete its ongoing work on Southern Resident Killer Whales and to complete long-term consultation on the Salmon Fishery Management Plan. Dkt. #41. On April 21, 2021, Federal Defendants issued a Biological Opinion titled *Authorization of the West Coast Ocean Salmon Fisheries Through Approval of the Pacific Salmon Fishery Management Plan Including Amendment 21 and Promulgation of Regulations Implementing the Plan for Southern Resident Killer Whales and their Current and Proposed Critical Habitat* (NMFS Consultation Number: WCRO-2019-04074) (“2021 Biological Opinion”).

By letter on August 31, 2021, and by publication in the *Federal Register* on September 14, 2021, 86 Fed. Reg. 51,017, NMFS announced the approval of Amendment 21 to the Salmon Fishery Management Plan.

Upon NMFS’ approval/disapproval/partial approval of Amendment 21, Plaintiffs agreed to dismiss their amended complaint. Plaintiffs request that the Court grant this unopposed request for voluntary dismissal.

Dated: October 5, 2021

Respectfully submitted,

By: s/ Julie Teel Simmonds

By: s/ Sarah Uhlemann

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Attorneys for Plaintiffs

IT IS SO ORDERED,

Date: _____, 2021 Signed By: _____

HON. MARSHA J. PECHMAN
United States District Court Judge

CERTIFICATE OF SERVICE

I certify that the foregoing will be electronically filed with the Court's electronic filing system, which will generate automatic service upon on all Parties enrolled to receive such notice.

s/ Julie Teel Simmonds
JULIE TEEL SIMMONDS